



BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)

STEPHEN M. JOHNSON,)
Bar No. 015831)

RESPONDENT.)

Nos. 00-1856, 00-2468, 00-2481,
01-0895, 01-1835, 01-1903, 01-2191,
02-0217, 02-0227, 02-0500, 02-0860,
03-0376, 03-0394, 03-0472

DISCIPLINARY COMMISSION
REPORT

These matters came before the Disciplinary Commission of the Supreme Court of Arizona on June 21, 2003 pursuant to Rule 56 Ariz. R. S. Ct., for consideration of the Tender of Admissions and Agreement for Discipline by Consent (Agreement) and Joint Memorandum in Support of Agreement for Discipline by Consent (Joint Memorandum) filed April 28, 2003, providing for a six month and one day suspension, upon reinstatement two years of probation with participation in the Law Office Member Assistance Program (LOMAP) with a practice monitor (PM), the Member Assistance Program (MAP), completion of the Trust Account Ethics Enhancement Program (TAEHP), and costs of these disciplinary proceedings. The Commission requested oral argument. The State Bar, Respondent, and Respondent's Counsel were present.

Decision

The nine¹ members of the Commission by majority of seven² recommend accepting

¹ Commissioner Atwood did not participate in these proceedings. Jeffrey Messing, a Hearing Officer from Phoenix, participated as an ad hoc member.

² Commissioners Bowman and Gutierrez were opposed and believed that based on the presence of aggravating factors 9.32(c) pattern of misconduct and (d) multiple offenses that a lengthier suspension was more appropriate, as Respondent has demonstrated a long-standing pattern of not communicating with clients.

and incorporating by reference the Agreement and First Amended Joint Memorandum in Support of Tender of Admissions and Agreement for Discipline by Consent providing for a six month and one day suspension, upon reinstatement two years of probation³ (LOMAP/PM, MAP, TAEPP), and costs of these disciplinary proceedings.

Discussion

In consideration of a proportional and appropriate sanction, the Commission considered *Matter of Mendoza*, 01-0894 et al., which was also on the Commission's June 2003 agenda. At first glance it appeared that both cases were similar in nature, but that the recommended length of suspension seemed disproportionate.

At oral argument, Bar Counsel distinguished these matters by the degree of injury caused by the particular misconduct. Although not specifically discussed in the Joint Memorandum, Bar Counsel advised that in this instant matter there was only potential injury to clients whereas in *Mendoza* actual injury occurred because clients were barred from filing claims, some of which were significant. See Commission transcript, pp. 13-14.

Bar Counsel further advised that significant mitigation is present in *Johnson* that is not present in *Mendoza*. After obtaining counsel, but prior to entering into this agreement, Johnson voluntarily contacted MAP and LOMAP and entered into a voluntary therapeutic agreement. In addition, he took the necessary steps to remedy his misconduct and to ensure that his misconduct would not reoccur. While a prior disciplinary offense⁴ is present in this matter, little weight was given to this factor because the misconduct occurred during the

³ The Commission notes that the standard compliance language contained in the Agreement inadvertently states that a hearing will be conducted "in no event less than thirty (30) days" and should read "in no event later than 30 days." See Agreement, p. 32, item 6.

same time period as the misconduct at hand. See Joint Memo, pp. 2-3 and Commission transcript, p. 22. Also in drafting this agreement, Bar Counsel gave consideration to the potential problems involving the credibility of witnesses, had this instant matter proceeded to a formal hearing.

Regarding the extent of injury involved, the Commission is concerned that there is some degree of harm to incarcerated clients when their cases are not handled in a timely manner and proceedings are delayed, even if ultimately they do not prevail. Bar Counsel acknowledged that there was some delay in the filing of pleadings on the clients' behalf, but stated there is no evidence that Respondent's clients were prejudiced or suffered any adverse impact such as a longer jail term because of the delay in their cases. See Commission transcript, pp. 14-15 and pp. 24-26.

The Commission also noted that there was no evidence in the record to support mitigating factor 9.32(c) personal and emotional problems.⁵ Case law has established that self-serving testimony is not enough to prove personal or emotional problems. *Matter of Augenstein*, 178 Ariz. 133, 137, 871 P.2d 254 (1994).

Bar Counsel acknowledged that Respondent's self-written letter (See Tender, Exhibit A) demonstrates sincere remorse but does not discuss his problems in great detail. She was able to verify these circumstances through Respondent's friends and contemporaries. See Commission transcript, p. 6.

⁴ On May 25, 2000, Respondent received an Informal Reprimand and Probation (TAEPP) for violating ERs 1.15 and 8.1(b) and SCR's 43, 44, 51(h) and (i).

⁵ These include illness of child, marital and financial problems, and dissolution of law firm partnership.

Conclusion

1 The Court has held that the purposes of discipline are to protect the public and deter
2 similar conduct by other lawyers, *In re Kersting*, 151 Ariz. 171, 726 P.2d 587 (1986); instill
3 public confidence in the bar's integrity, *In re Horwitz*, 180 Ariz. 20, 29, 881 P.2d, 352, 362
4 (1994); and to maintain the integrity of the legal system, *In re Fioramonti*, 176 Ariz. 182,
5 187, 859 P.2d 1315, 1320 (1993).
6

7 Following oral argument, the Commission majority was persuaded that the agreed
8 upon sanction is within the range of reasonableness and moreover, will serve the purposes
9 of discipline. A six month and one day suspension is significant. Respondent is required to
10 apply for reinstatement pursuant to Rules 71 and 72 and bears the burden of proof in
11 demonstrating his rehabilitation and fitness to practice. The Commission is also satisfied
12 that the terms of probation will further serve to protect the public once reinstatement is
13 effective.
14

15 Therefore, having considered Respondent's admitted misconduct, application of the
16 ABA *Standards*, factors present in aggravation and mitigation, and a proportionality
17 analysis, the Commission recommends accepting the proposed Agreement and Joint
18 Memorandum which provides for a six month and one day suspension, upon reinstatement
19 two years of probation (LOMAP/PM, MAP, TAEPP), and costs of these disciplinary
20 proceedings.
21

22 RESPECTFULLY SUBMITTED this 16th day of July, 2003.
23

24 Jessica Funkhouser
25 Jessica G. Funkhouser, Chair
26 Disciplinary Commission

1 Original filed with the Disciplinary Clerk
2 this 16th day of July, 2003.

3 Copy of the foregoing mailed
4 this 16th day of July, 2003:

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13 Copy of the foregoing hand-delivered
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